

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIAJIE ZHU,
Plaintiff,

v.

JING LI, et al.,
Defendants.

Case No. 19-cv-02534-JSW (TSH)

DISCOVERY ORDER

Re: Dkt. Nos. 86, 88

Defendants' request for production ("RFP") 40 asked for "all email communications received by, sent by, or copying 'alvinli@shanghaitianan.com' from January 1, 2012 to present that pertained to Teetex." RFP 41 asked for the same concerning "liangping@shanghaitianan.com." In response to both RFPs, Plaintiff Jiajie Zhu stated that all responsive documents have been produced.

In the current motion to compel, Defendants clarify that they want the emails in the possession of the company Shanghai Tian An ("STA"), which is owned by Zhu's wife and where he works as well. Defendants say that STA is a family business, and they cite deposition testimony that "the IT person" at the company reports to Zhu. However, STA is not a party to this case, and Defendants have not subpoenaed it.


Assuming for the sake of argument that these emails are relevant, Defendants have failed to demonstrate that they are in Zhu's possession, custody or control. The parties agree that Zhu does not possess or have custody over these STA email accounts. And they agree that under Ninth Circuit case law, "control" means the legal right to obtain documents on demand. Here, Defendants have not demonstrated that Zhu has that legal right. That STA is a family business does not negate that it is a separate legal entity. And it's owned by Zhu's wife, not by Zhu. The

fact that the IT person reports to Zhu does not show that he has the legal right to demand that company email accounts be searched for purposes of litigation that he is involved in and that the company is not a party to.

Because Defendants have not shown that the requested documents are in Plaintiff's possession, custody or control, their motion to compel is denied.

IT IS SO ORDERED.

Dated: September 29, 2021


THOMAS S. HIXSON
United States Magistrate Judge